

ORDINANCE NO.2002-017

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 92-38, PERTAINING TO THE CREATION OF A LOCAL CONSTRUCTION REGULATION BOARD, PROVIDING FOR DEFINITIONS; PROVIDING FOR DESIGNATION OF CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS AS THE LOCAL CONSTRUCTION REGULATION BOARD; PROVIDING FOR ORGANIZATION OF LOCAL CONSTRUCTION REGULATION BOARD; PROVIDING FOR JURISDICTION; PROVIDING FOR HEARING PROCEDURES; PROVIDING FOR LOCAL CONSTRUCTION REGULATION BOARD POWERS; PROVIDING FOR APPEALS AND NOTICE PROCEDURES; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 489, Florida Statutes, provides for the creation of a local construction regulation board to discipline state certified contractors who willfully violate the Florida Building Code or are guilty of fraud; and

WHEREAS, Florida case law provides that local construction boards of adjustments and appeals are the proper local entities to serve as local construction regulation boards under Chapter 489, Florida Statutes; and

WHEREAS, Palm Beach County's Construction Board of Adjustment and Appeals has the ability to efficiently discipline state certified contractors who willfully violate the Florida Building Code or who commit fraud; and

WHEREAS, it is the desire of Palm Beach County that the Palm Beach County Construction Board of Adjustments and Appeals serve as the local construction regulation board under Chapter 489, Florida Statutes, to protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. DEFINITIONS:

The definitions in sections 489.105, and 489.505, Florida

1 Statutes, apply to this Ordinance.

2 **SECTION 2. DESIGNATION AND ORGANIZATION:**

3 (a) ~~The Construction Industry Licensing Board Palm Beach~~
4 ~~County Construction Board of Adjustments and Appeals of Palm Beach~~
5 ~~County~~, as created by Palm Beach County Code Chapter 7, Article IV,
6 Section 7-52, 108 (Ordinance 2002-005), pursuant to ~~chapter~~
7 ~~67-1876, Laws of Florida, as amended~~ Section 553.73, Florida
8 Statutes, is hereby designated as the local construction regulation
9 board.

10 (b) The chairperson and vice-chairperson of the ~~construction~~
11 ~~industry licensing board~~ construction board of adjustment and
12 appeals shall serve as chairperson and vice-chairperson of the
13 local construction regulation board. The affirmative vote of a
14 majority of the members present at any meeting of the local
15 construction regulation board shall be necessary for it to take
16 action. In the event of a tie vote the proposed motion shall be
17 considered to have failed.

18 (c) Meetings of the local construction regulation board may
19 be convened by the director of the ~~contractor's certification~~
20 building division giving written notice thereof to each member of
21 the board. Unless waived by a majority of the board, notice of
22 meetings shall be given at least seven (7) business days prior
23 thereto. Minutes shall be maintained of all hearings and meetings
24 held by the board, and all hearings and meetings shall be open to
25 the public.

26 (d) The board of county commissioners shall provide clerical
27 and administrative personnel from its department of planning,
28 zoning and building, building division of ~~contractor's~~
29 ~~certification~~, or such other personnel as may be reasonably
30 required by the local construction regulation board to properly
31 perform its duties. The county attorney or his designee shall
32 attend meetings of the local construction regulation board as
33 counsel to the board. The director or his designee shall represent

1 the county by presenting alleged violations to the board.

2 **SECTION 3. JURISDICTION:**

3 (a) The local construction regulation board shall have the
4 jurisdiction and authority to hear and decide whether or not
5 contractors certified pursuant to chapter 489, Florida Statutes,
6 including electrical contractors, are guilty of fraud or willful
7 building code violations within the county. Also, the board may
8 deny the issuance of a building permit or electrical permit to a
9 contractor certified pursuant to chapter 489, Florida Statutes, if
10 the board finds that the contractor is guilty of fraud or a willful
11 building code violation.

12 (b) The jurisdiction of the local construction regulation
13 board shall not be exclusive. Nothing contained herein or pursuant
14 to Palm Beach County Code Chapter 7, Article IV, Section 7-52 108
15 (Ordinance No. 87-), Chapter 67-1876, Laws of Florida, or Chapter
16 489, Florida Statutes, as amended, shall prohibit the county from
17 enforcing its codes and ordinances by appropriate remedy in circuit
18 court or by other means at the option of the board of county
19 commissioners. Nothing contained herein shall prohibit the county
20 construction industry licensing board from enforcing its
21 jurisdiction or powers as set forth in chapter 67-1876, Laws of
22 Florida, as amended.

23 **SECTION 4. PROCEDURES AND HEARINGS:**

24 (a) An alleged violation of any of the construction or home
25 improvement industries as set forth and described in section 3
26 shall be filed with the local construction regulation board by the
27 director of the building ~~county contractors certification~~
28 division. Thereafter, the director shall notify the alleged
29 violator as provided for herein and schedule a hearing of the local
30 construction regulation board as provided for herein. The director
31 shall notify the local construction regulation board as to the name
32 and address of the alleged violator and briefly describe the
33 alleged violation which is believed to exist.

1 (b) At the hearing the burden of proof shall be upon the
2 director or his designee to show by a preponderance of the evidence
3 that a violation does exist. Where proper notice of the hearing has
4 been provided to the alleged violator, a hearing may proceed even
5 in the absence of the alleged violator. All testimony shall be
6 under oath and shall be recorded. The formal rules of evidence
7 shall not apply, but fundamental due process should be observed and
8 govern the proceedings.

9 (c) Upon determination of the chairperson, irrelevant,
10 immaterial or unduly repetitious evidence may be excluded, but all
11 other evidence of a type commonly relied upon by reasonably prudent
12 persons in the conduct of their affairs shall be admissible,
13 whether or not such evidence would be admissible in a trial in the
14 courts of this state. Any part of the evidence may be received in
15 written form. Any member of the local construction regulation
16 board, or the attorney representing the local construction
17 regulation board, may inquire of any witness before the local
18 construction regulation board. The alleged respondent (hereinafter
19 also referred to as respondent), counsel, or the director or his
20 designee shall be permitted to inquire of any witness before the
21 local construction regulation board. The local construction
22 regulation board may consider testimony presented by the director,
23 the respondent, or any other witnesses.

24 (d) The local construction regulation board shall render its
25 decision based on evidence entered into the record. The decision
26 shall be by motion approved by the affirmative vote of a majority
27 of those members present and voting, except that at least three (3)
28 members of the local construction regulation board must vote for
29 the decision to be official. The local construction regulation
30 board's decision shall then be transmitted to the respondent in the
31 form of a written order including findings of fact, and conclusions
32 of law consistent with the record and the local construction
33 regulation board's powers as set forth herein. The order shall be

transmitted by certified mail to the respondent within thirty (30) days after the hearing.

SECTION 5. BOARD POWERS:

(a) The local construction regulation board shall have the power to:

(1) Adopt rules and regulations to carry out the provisions of this section and for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to compel attendance at its hearings. Subpoenas may be served by a sheriff or other authorized persons as provided for by rule 1.410(c), Florida Rules of Civil Procedure.

(3) Subpoena records, surveys, drawings, contracts, and other documentary materials.

(4) Issue orders having the full force and effect of law. Such orders may be enforced in the circuit court of the county and injunctive relief may be pursued.

(5) Take testimony under oath.

(b) The local construction regulation board may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtain a permit or permits with specific conditions ~~the issuance of a building or electrical permit to a certified~~ pursuant to chapter 489, Florida Statutes, if the board finds who has been found, after a duly noticed hearing, that such contractor is to be guilty of fraud or a willful building code violation, or if the board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the last 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or violation would have been fraud or a violation if committed in Palm Beach County. In the event a building or electrical permit is denied, the director shall provide the state

1 department of business and professional regulations with
2 notification of and information concerning such permit denial
3 within ~~thirty (30)~~ fifteen (15) days after the board decides to
4 deny the permit.~~the decision of the local construction regulation~~
5 ~~board to deny the permit.~~

6 **SECTION 6. APPEALS:**

7 a.) Any aggrieved party may appeal an order of the local
8 construction regulation board, including the county, to the circuit
9 court of the county. Such appeal shall not be a hearing de novo,
10 but shall be a petition for writ of certiorari and the court shall
11 be limited to appellate review of the record created before the
12 local construction regulation board.

13 b.) Any appeal filed shall be considered timely if it was
14 filed within thirty (30) days after the order being appealed was
15 filed with the clerk of the local construction regulation board.
16 ~~receipt of the written order.~~

17 ~~c.) The county may assess a reasonable charge for the~~
18 ~~preparation of the record to be paid by the appellant in accordance~~
19 ~~with Florida Statutes section 119.07.~~

20 **SECTION 7. NOTICES:**

21 All notices required by this section shall be by certified
22 mail, return receipt requested, or, when mail is not effective, by
23 hand delivery by a sheriff's deputy or other authorized persons
24 pursuant to rule 1.410(c), Florida Rules of Civil Procedure, or
25 public notice in an appropriate local newspaper.

26 **SECTION 8. REPEAL OF LAWS IN CONFLICT:**

27 All local laws and ordinances in conflict with any provisions
28 of this Ordinance are hereby repealed to the extent of such
29 conflict.

30 **SECTION 9. SEVERABILITY:**

31 If any section, paragraph, sentence, clause, phrase, or word
32 of this Ordinance is for any reason held by the Court to be

unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

SECTION 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 11. EFFECTIVE DATE:

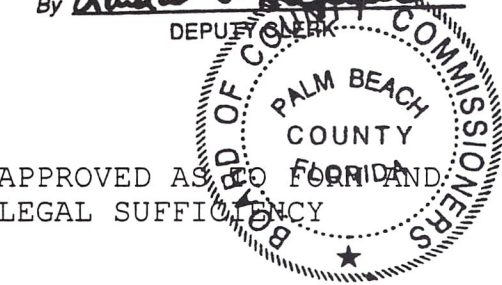
The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 21 day of May, 2002.

DOROTHY H. WILKEN, CLERK
Board of County Commissioners
By Dorothy H. Wilken
DEPUTY CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: Warren H. Newell
Warren H. Newell, Chairman



By: Amy Taylor Petrick
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 30 day of May, 2002.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on May 21, 2002.
DATED at West Palm Beach, FL on 6/13/02.
DOROTHY H. WILKEN, Clerk
By: Wiane Brown D.C.